

RESOLUTION NO. R-2018-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING SETTLEMENT AND MUTUAL RELEASE AGREEMENTS REGARDING *CRUMP, ET AL. V. LOST PINES GROUNDWATER CONSERVATION DISTRICT, ET AL.*, CAUSE NO. 194-21, 21ST JUDICIAL DISTRICT, BASTROP COUNTY, TEXAS; *CRUMP, ET AL. V. LOST PINES GROUNDWATER CONSERVATION DISTRICT*, CAUSE NO. 232-21, 21ST JUDICIAL DISTRICT, BASTROP COUNTY, TEXAS; AND *MCCALL RANCH, L.P., ET AL. V. LOST PINES GROUNDWATER CONSERVATION DISTRICT AND CITY OF BASTROP*, CAUSE NO. 423-4980, 423RD JUDICIAL DISTRICT, BASTROP COUNTY, TEXAS, ATTACHED AS EXHIBIT A; DELEGATING CERTAIN ACTIONS RELATED THERETO; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTATION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, there are three lawsuits currently pending for which the City is a party: (1) *Crump, et al. v. Lost Pines Groundwater Conservation District, et al.*, Cause No. 194-21, 21st Judicial District, Bastrop County, Texas; (2) *Crump, et al. v. Lost Pines Groundwater Conservation District*, Cause No. 232-21, 21st Judicial District, Bastrop County, Texas; and (3) *McCall Ranch, L.P., et al. v. Lost Pines Groundwater Conservation District and City of Bastrop*, Cause No. 423-4980, 423rd Judicial District, Bastrop County, Texas (collectively, "Lawsuits"); and

WHEREAS, on April 25, 2017, the City and certain parties entered into a Memorandum of Settlement resolving all disputes between them related to the City's request for an operating permit for a water well from the Simsboro Aquifer; and

WHEREAS, the parties to the Lawsuits seek to settle their differences and release each other from all claims, counter-claims, and liability brought in the Lawsuits, or that could be brought in the Lawsuits.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

SECTION 1. The recitals contained in the preamble of this Resolution are determined to be true and correct and are hereby adopted as a part of this Resolution.

SECTION 2. The City Council of the City of Bastrop hereby approves and authorizes the City Manager to settle the Lawsuits and execute a Settlement and Mutual Release Agreement in the form of the attached Exhibit A. The City Council further directs the City Manager to direct legal counsel to execute the appropriate documents to dismiss said Lawsuits.

SECTION 3. It is hereby declared that the sections, paragraphs, sentences, clauses, and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph, or section of this Resolution shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Resolution, because the same would have been enacted by the City Council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 4. All resolutions and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict herewith.

SECTION 5. This Resolution shall take effect immediately after passage hereof.

SECTION 6. This Resolution was read and adopted at a meeting that was open to the public and notice of the time, place and purpose of said meetings was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

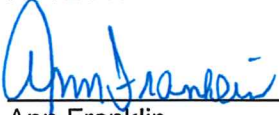
DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop, Texas on the 10th day of April, 2018.

APPROVED:



Connie Schroeder
Mayor

ATTEST:



Ann Franklin
City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This SETTLEMENT AND MUTUAL RELEASE AGREEMENT (“Agreement”) is made and entered by and between: (1) the persons and entities listed in Footnote 1¹ (collectively referred to as “Landowners”), (2) the Lost Pines Groundwater Conservation District, the General Manager of the Lost Pines Groundwater Conservation District, and the Board of Directors of the Lost Pines Groundwater Conservation District (collectively referred to as “District”); and (3) the City of Bastrop (“City”). The Landowners, District, and City are singularly referred to as a “Party” and collectively as “Parties.”

RECITALS

WHEREAS, there are three lawsuits currently pending between the Parties: (1) *Crump, et al. v. Lost Pines Groundwater Conservation District, et al.*, Cause No. 194-21, 21st Judicial District, Bastrop County, Texas; (2) *Crump, et al. v. Lost Pines Groundwater Conservation District*, Cause No. 232-21, 21st Judicial District, Bastrop County, Texas; and (3) *McCall Ranch, L.P., et al. v. Lost Pines Groundwater Conservation District and City of Bastrop*, Cause No. 423-4980, 423rd Judicial District, Bastrop County, Texas (collectively, “Lawsuits”);

WHEREAS, on April 25, 2017, the City and Landowners entered into a Memorandum of Settlement resolving all disputes between them related to the City’s request for an operating permit for a water well to withdraw annually 2,000 acre feet of water from the Simsboro Aquifer identified as District Well Number 5854819 (“City Well No. 1”), which settlement is referred to herein as “April 25, 2017 Settlement”;

WHEREAS, certain claims and counter-claims remain pending between the Parties in the Lawsuits;

WHEREAS, the Parties desire to release each other from all claims, counter-claims, and liability brought in the Lawsuits, or that could be brought in the Lawsuits;

NOW, THEREFORE, in consideration of the mutual promises and covenants and agreements contained herein and in the Memorandum of Settlement, dated April 25, 2017, and for other good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:

1. Settlement Payment. Upon receipt by McCall Ranch, L.P. of a fully executed copy of this Agreement, McCall Ranch, L.P. shall tender payment of FIVE THOUSAND DOLLARS (\$5,000.00) to the Lost Pines Groundwater Conservation District by delivering a check made payable to the “Lost Pines Groundwater Conservation District” (the “Settlement

¹ “Landowners” collectively refers to (1) McCall Ranch, L.P., Mary Jo Goertz, Robert Martinez, Christi Martinez, Karen Sue Bennight Morris, Anita Kay Linenberger, Aya Linenberger Lueders, Dara K. Hoffernek, Maurice Bennight, Marlene Bennight, Linda Evans Logan, James K. Logan, Kay Graves, Troy Graves, Renee Diamond, Paul Diamond, Charles Tarket, Caliva & Spencer Family Trust, Lyn F. Caliva, Janet Spencer, and Bar W. Ranch Partnership, Ltd. (collectively, “McCall Ranch Group”); and (2) Grant Crump, David Odom, Jimmy Odom, Linda Odom, Tommy Odom, Linda Odom, Jimmy Williamson, and Sarah Williamson (collectively, “Crump Group”).

Payment”) to counsel for the District not later than three (3) business days after the fully executed copy of this Agreement is received by McCall Ranch, L.P.

2. Dismissal of Lawsuits. The Parties to each of the Lawsuits agree to file an Agreed Nonsuit with Prejudice in each of the Lawsuits within three (3) business days after the Settlement Payment in Paragraph 1 is delivered to counsel for the District, with each side bearing its own attorneys’ fees and costs. The form of the agreed nonsuits for each of the three Lawsuits is attached as Exhibits A, B, and C hereto.

3. Parties’ Mutual Release and Agreement. For the consideration set forth in this Agreement and the Memorandum of Settlement, dated April 25, 2017, the Parties hereby and fully and unconditionally release, relinquish, dismiss, and forever discharge each other from any and all claims, counter-claims, causes of action, damages, or demands in the Lawsuits or that could have been brought in the Lawsuits. The Parties understand, acknowledge, warrant, and agree that: (i) none of this Agreement shall constitute or shall be used or construed as an admission of fault or liability on the part of any Party; (ii) the releases in this Agreement are knowing and voluntary and are executed without reliance on any statement or representation by any of the released Parties, except to the extent such statements and representations are expressly set forth in this Agreement; and (iii) nothing in this Agreement shall operate to restrict, limit, or preclude a claim, counter-claim, or cause of action for breach of or to enforce this Agreement.

4. Additional Terms and Acknowledgements. The Parties acknowledge that the agreements set forth in this Agreement are supported by full and adequate consideration and that this Agreement is intended to be a contract between the Parties, fully enforceable. The Parties agree to cooperate to prepare all documents and take other actions necessary to put this Agreement into effect.

5. Signatures. This Agreement may be executed in several counterparts, including by electronic means such as facsimile and e-mail, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

6. Authority. If this Agreement is executed by an attorney for a Party, the attorney executing this Agreement represents and warrants that he or she has full authority to execute this Agreement on behalf of and in the name of the Party represented by that attorney.

7. Effective date. This Agreement shall be effective on the day it is fully executed by the Parties.

AGREED and APPROVED:

MCCALL RANCH GROUP

By: 
Lynn Sherman

Date: 4-2-18

CRUMP GROUP

By: 
Shelby O'Brien

Date: 4-2-18

**LOST PINES GROUNDWATER CONSERVATION DISTRICT, GENERAL MANAGER
OF THE DISTRICT, AND BOARD OF DIRECTORS OF THE DISTRICT**

By: 
Natasha Martin

Date: 4-2-2018

THE CITY OF BASTROP

By: 
Lynda Humble

Date: 4-10-18

EXHIBIT A

CAUSE NO. 194-21

GRANT CRUMP, DAVID ODOM, JIMMY	§	IN THE DISTRICT COURT OF
AND LINDA ODOM, TOMMY AND LINDA	§	
ODOM, MR. AND MRS. J.D. RHOADES,	§	
DAVID AND BRIDGET VANCE, AND	§	
JIMMY AND SARAH WILLIAMSON,	§	
Plaintiffs	§	
	§	
vs.	§	
	§	BASTROP COUNTY, TEXAS
LOST PINES GROUNDWATER CONSER-	§	
VATION DISTRICT; JAMES TOTTEN, IN	§	
HIS OFFICIAL CAPACITY AS GENERAL	§	
MANAGER OF THE LOST PINES	§	
GROUNDWATER CONSERVATION	§	
DISTRICT; AND MICHAEL TALBOT,	§	
WILLIAM "BILLY" SHERRILL, DOUG	§	
PRINZ, ALICE DARNELL, DAVID	§	
FLEMING, KEITH HANSBERGER, LARRY	§	
SCHATTE, CLIFTON SEIDEL, MICHAEL	§	
SIMMANG, AND CARL STEINBACH, IN	§	
THEIR RESPECTIVE OFFICIAL	§	
CAPACITIES AS DIRECTORS OF THE	§	
LOST PINES GROUNDWATER	§	
CONSERVATION DISTRICT,	§	
Defendants.	§	21st JUDICIAL DISTRICT

AGREED NONSUIT WITH PREJUDICE AND MOTION TO DISMISS WITH PREJUDICE

COME NOW Plaintiffs, Defendants, and Intervenor City of Bastrop in the above-styled and numbered cause of action, and file this Agreed Nonsuit with Prejudice and would show the Court the following:

Plaintiffs, Defendants, and Intervenor have settled their dispute and wish to dismiss with prejudice all of their claims and counter-claims in the above styled and numbered cause against each other. Per the parties' agreement, each of the parties shall bear their own attorney's fees and costs in connection with the claims being non-suited with prejudice. A proposed order is being provided for the Court.

Respectfully submitted,

By: /s/ Shelby O'Brien

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Linda Odom, Jimmy Williamson,
and Sarah Williamson**

By: /s/ Natasha Martin

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**Attorney for Lost Pines Groundwater
Conservation District**

By: /s/ George Hyde

George Hyde (SBN 45006157)
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LLP**
1633 Williams Drive, Suite 200
Georgetown, Texas 78628
512.930.1317 / 512.929.1641 (fax)

Attorneys for the City of Bastrop

CERTIFICATE OF SERVICE

I hereby certify that on April __, 2018, a true and correct copy of the foregoing document was served, via electronic service, on all counsel of record:

George Hyde (SBN 45006157)
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LLP**
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**Attorney for Lost Pines Groundwater
Conservation District**

/s/ Shelby O'Brien
Shelby O'Brien

EXHIBIT B

CAUSE NO. 232-21

GRANT CRUMP, DAVID ODOM, JIMMY	§	IN THE DISTRICT COURT OF
ODOM, LINDA ODOM, TOMMY ODOM,	§	
LINDA ODOM, JIMMY WILLIAMSON,	§	
AND SARAH WILLIAMSON,	§	
Plaintiffs	§	
	§	
vs.	§	BASTROP COUNTY, TEXAS
	§	
LOST PINES GROUNDWATER CONSER-	§	
VATION DISTRICT,	§	
Defendant.	§	21 st JUDICIAL DISTRICT

**AGREED NONSUIT WITH PREJUDICE AND
MOTION TO DISMISS WITH PREJUDICE**

COME NOW Plaintiffs and Defendant in the above-styled and numbered cause of action, and file this Agreed Nonsuit with Prejudice and would show the Court the following:

Plaintiffs and Defendant have settled their dispute and wish to dismiss with prejudice all of their claims and counter-claims in the above styled and numbered cause against each other. Per the parties' agreement, each of the parties shall bear their own attorney's fees and costs in connection with the claims being non-suited with prejudice. A proposed order is being provided for the Court.

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**Attorney for Lost Pines Groundwater
Conservation District**

/s/ Shelby O'Brien
Shelby O'Brien

EXHIBIT C

Respectfully submitted,

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Karen Sue Bennight Morris, Anita Kay
Leninberger, Aya Linenberger Lueders,
Dara K. Hoffernek, Maurice Bennight,
Marlene Bennight, Linda Evans Logan,
James K. Logan, Kay Graves, Troy Graves,
Renee Diamond, Paul Diamond, Charles
Tarket, Caliva & Spencer Family Trust,
Lyn F. Caliva, Janet Spencer and Bar W.
Ranch Partnership, Ltd., Plaintiffs**

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Lyn F. Caliva, Janet Spencer and Bar W.
Ranch Partnership, Ltd., Plaintiffs**

/s/ Shelby O'Brien

Shelby O'Brien